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ABSTRACT

This document presents some helpful examples of existing school policies and state laws that may spark action to help communities deal with homophobia and harassment of homosexual students. Most school districts have nondiscrimination policies of one sort or another, but these policies may not cover discrimination based on sexual harassment. Appendixes A, B, and C contain the model anti-harassment policies developed for school districts by the state of Vermont, Dade County (Florida), and the school district of Ashland (Wisconsin). Other statewide ethical codes that apply to educators are found in Alaska, Connecticut, Florida, and Pennsylvania. These states legally oblige educators not to discriminate against students on the basis of sexual orientation. Appendix D contains these codes of ethics. Of course, improvements in antidiscrimination policies or laws at the state level can have much broader favorable impact, although the protections operate at various levels and may involve varying effectiveness in terms of enforcement and remedies. Appendix E contains a copy of Rhode Island's policy statement, and Appendix F contains a summary of protections against anti-gay bias in Connecticut, Massachusetts, Pennsylvania, Vermont, and Wisconsin. Minnesota also contains a broad civil-rights statute. These sample policies and laws are helpful to the efforts of all those advocates doing the important work of helping to save the futures of youth struggling with anti-gay discrimination. (SLD)

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Lambda Legal Defense and Education Fund

A national organization committed to achieving full recognition of the civil rights of lesbians, gay men, and people with HIV/AIDS through impact litigation, education, and public policy work.

ED 422 420

TAKING THE OFFENSIVE IN THE STRUGGLE AGAINST ANTI-GAY ABUSE IN PUBLIC SCHOOLS:

IMPROVING SCHOOL POLICIES AND STATE LAWS

A Landmark Compendium of Model Policies and Laws

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TO: Those Working to Stop Anti-Gay Abuse in Schools

FROM: David S. Buckel, Staff Attorney

DATE: October 24, 1997

RE: IMPROVING SCHOOL POLICIES AND STATE LAWS

In working to stop anti-gay abuse in schools, advocates have several choices for action. One important avenue for change involves improving the school policies and state laws so they apply to acts of anti-gay bigotry. In our ongoing educational outreach to the advocates for youth struggling every day with homophobia and harassment in schools, we present below some helpful examples of existing school policies and state laws that may spark ideas for action in your community. Your grassroots work to reform relevant policies and laws, and get new protections in place, is so important to the young people harmed by anti-gay attitudes and attacks.

We cover here three general areas to be considered in improving protections for students facing anti-gay abuse:

* local policies that apply in individual school districts,
* state-wide ethical codes that apply to educators, and
* state-wide education policies or laws.

Decisions about which of the three areas to focus on will vary from community to community.

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For example, factors to consider include the pre-existing policies and laws, the community's political forces, and the advocates' particular allies and resources. Once the area for work is chosen, often the challenge is the same: first, adding a specific prohibition on anti-gay harassment or discrimination based on sexual orientation; and second, making sure that the enforcement mechanisms are strong, so the prohibition will really mean something if it is violated. There must be a useful enforcement procedure and a real remedy for correcting or compensating for the discrimination. It may be that these steps should occur one at a time, because to take both on at once could undermine any success at all.

It addition to the attached examples of anti-discrimination and anti-harassment policies, there may be other types of policies that would effectively address needs of the youth in your community, such as policies with regard to gay-related student clubs. Student clubs can provide important peer support. Please contact Lambda for background information that may help you pursue other law reform efforts.

1. LOCAL POLICIES THAT APPLY IN INDIVIDUAL SCHOOL DISTRICTS

Most school districts have non-discrimination policies of one sort or another, although the policies may not cover discrimination based on sexual orientation. Attached are samples of policies that do cover such discrimination. Attached first is a copy of the model anti-harassment policy developed by the Department of Education of the State of Vermont. See **Appendix A.** Also attached is the anti-discrimination policy for the School Board of Dade County, Florida. See **Appendix B.** While we do not present these sample policies as perfect, we do find that they provide many thoughtful approaches, including giving notice to students and parents that they

may have recourse outside the school complaint process, such as with a lawsuit.

Also attached is a copy of the non-discrimination policy for the School District of Ashland, Wisconsin. See **Appendix C**. The School District of Ashland was one of the defendants in Lambda's precedent-setting Nabozny lawsuit, in which we obtained just under a million dollars for our client for the failure of the school officials to stop four years of anti-gay harassment and assaults against him when he was a student. You will notice that the Ashland non-discrimination policy includes sexual orientation as a covered category. You will also notice, in the copy of the verdict form under the policy, that our jury in the case found three school principals liable, but let the school district off the hook. We cannot be sure, but there is good reason to believe that the jury felt the school district should not be liable when it had a policy in place that prohibited anti-gay discrimination.

While we disagree with that one finding by the jury, because school districts can be liable for the actions of school officials (and we asserted Ashland was), it may be useful for advocates to point out to school boards concerned about liability for anti-gay abuse that the first jury to address such a case seemed to have been impressed by the defendant school's policy of covering discrimination based on sexual orientation. Such a point can prompt improvement in policy when the fear of liability is the driving force. At the same time, however, it is important for you to know that, as a matter of law and as a matter of actually solving the problem, having a policy without meaningful implementation is insufficient (also remember that our jury still found the three school principals liable, leading to the near-million dollar settlement).

2. STATE-WIDE ETHICAL CODES THAT APPLY TO EDUCATORS

Customarily, educators have to be licensed by the state in order to teach our youth. As with lawyers and doctors, teachers and school principals have ethical obligations that attach to their licenses. So far, we have discovered four states that ethically oblige educators to not discriminate against students on the basis of sexual orientation. Those states are Alaska, Connecticut, Florida, and Pennsylvania. See **Appendix D**. Violations of the ethical codes can jeopardize the licenses of educators, because citizens can complain to the appropriate state agency in the same way they might complain about a doctor or lawyer. With such ethical obligations in hand, teachers who defend students against bigotry may find it useful to tell their colleagues two things: one, "Even if it wasn't the right thing to do, I would have no choice if I wanted to keep my license to teach," and two, "You have no choice either." Teachers' unions and state departments of education should be helpful in determining how ethical codes can be amended and enforced.

3. STATE-WIDE EDUCATION POLICIES OR LAWS

Of course, improvements in anti-discrimination policies or laws at the state level can have much broader favorable impact. However, as mentioned above, advocates need to wade through many factors in the assessment of whether to work at the state level, and consultation with folks knowledgeable about the state's politics is necessary. In addition, at the state level there are several levels of protection, each of which may entail widely varying effectiveness in terms of enforcement and remedies. Such varying effectiveness can be assessed by an attorney familiar

with the laws of the particular state.

Attached are some examples of the layers of state-wide protection. First, attached is a copy of the Rhode Island "Board of Regents Policy Statement on Discrimination Based on Sexual Orientation." See **Appendix E.** Also attached is a summary of protections against anti-gay bias in the education codes of five states: Connecticut, Massachusetts, Pennsylvania, Vermont, and the first state in the nation to provide such protections, Wisconsin. These protections are limited to the educational contexts in the state. See **Appendix F.** Lastly, below is the pertinent anti-discrimination language from the Human Rights Law for the state of Minnesota, a broad civil rights statute:

> **§363.03 Subd.5 Educational institution.** It is an unfair discriminatory practice:
>
> **(1)** To discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation or disability, or to fail to ensure physical and program access for disabled persons . . . .

Such state-wide civil rights laws may apply in many different contexts, including employment and housing, and typically have a more entrenched and meaningful enforcement structure.

* * *

We hope these sample policies and laws are helpful to the efforts of all those advocates doing the important work of helping to save the futures of youth struggling with anti-gay discrimination in our schools. The United States Supreme Court's historic discussion of the effect of racial discrimination in schools holds insightful truths about the effects of anti-gay

discrimination in our schools. In Brown v. Board of Education, the Court observed that discrimination reaching youth "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Brown, 347 U.S. 483 at 494 (1954). There are few priorities above protecting the hearts and minds of all youth, including lesbian, gay, and bisexual youth, so they can hang on to their dreams for their futures.

OTHER LAMBDA RESOURCES FOR YOUTH:

* *Stopping Anti-Gay Abuse of Students in Public Schools: A Legal Perspective*
* *Resources for Defending Gay/Straight Student Alliances and Other Gay-Related Groups in Public Schools*

OUR OFFICES:

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* **National Office**, 120 Wall Street, Suite 1500, New York, NY 10005-3904
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APPENDIX A

STATE OF VERMONT
DEPARTMENT OF EDUCATION
120 State Street
Montpelier, VT 05620-2501

MEMORANDUM

Date: January 19, 1995

From: Richard P. Mills, Commissioner

To: All Superintendents and Principals of Public and Independent Schools

Subject: Anti-Harassment Policies and Procedures

As you may recall, the 1994 Legislature enacted S-313, a bill that requires that all school districts and independent schools to have anti-harassment policies and procedures in place by August 1, 1995.

In conjunction with the Vermont Human Rights Commission and the Governors Commission on Women, my colleagues have drafted a model policy and set of procedures for you to consider for adoption by your respective boards. This model was developed with the assistance of educational and community leaders from around Vermont. I am proud of the product of this collaboration and am providing you a copy of that work as an attachment. I also want to publicly thank Sara Lee and Susan Egerton-Donnon, Governors Commission on Women, and Susan Sussman, Vermont Human Rights Commission, for their time and assistance to this project.

You are not required to adopt this model policy. You are required to adopt a policy that meets the statutory requirements by the above deadline. You may craft your own or adopt a model that meets your needs. There are other examples of model policies and procedures for your consideration. [e.g.the Vermont School Boards' Association, in conjunction with other members of the Vermont Education Coalition, has developed a policy that you may want to consider]. Please note that there are no specific training requirements in the procedures. However, the procedures include the statutory requirement that boards develop and initiate age-appropriate programs to effectively inform students and staff of the substance of the policy and procedures. I also strongly suggest that, at a minimum, the persons who will deal with the complaints receive training in cultural diversity, investigation techniques and the statutory requirements. My colleagues will be developing a list of training and funding sources to assist you.

Whatever model you use, I recommend that you involve all the members of your educational community in the discussions concerning wording and adoption. All parents, teachers, students and other community members have a stake in maintaining a safe, harassment free school environment.

** MODEL ANTI-HARASSMENT POLICY

General Statement of Policy

The _____ Supervisory Union and/or School District is committed to providing all students with a safe and supportive school environment. Members of the school community are expected to treat each other with mutual respect.[*and to accept the rich diversity which makes up the community. Disrespect among members of the school community is unacceptable behavior which threatens to disrupt the learning environment and decrease self-esteem.*] Harassment is a form of unlawful discrimination as well as disrespectful behavior which will not be tolerated.

It is hereby the policy of the _____ Supervisory Union/School District to oppose and prohibit, without qualification, unlawful harassment based on race, color, religion (creed), national origin, marital status, sex, sexual orientation, or disability.

Any unlawful harassment of a student by a member of the school community is a violation of this policy.

The _____ Supervisory Union/School District shall act to investigate all complaints of harassment, either formal or informal, verbal or written, and to discipline or take other appropriate action against any member of the school community who is found to have violated this policy.

Definitions

School community includes but is not limited to all students, school employees, contractors, unpaid volunteers and other visitors.

School Employee includes but is not limited to all teachers, support staff, administrators, bus drivers, custodians, cafeteria workers, coaches, school board members and agents of the school.

** [*Italics and brackets indicate language that is not required but is recommended as best practice*]

Unlawful Harassment means verbal or physical conduct based on a student's actual or perceived race, religion (creed), color, national origin, marital status, sex, sexual orientation or disability and which has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive environment. *Vermont Statutes, Title 16, Section 11(a)(26).*

Harassment can include any unwelcome verbal, written or physical conduct which offends, denigrates, or belittles any individual because of any of the characteristics described above. Such conduct includes, but is not limited to unsolicited derogatory remarks, jokes, demeaning comments or behavior, slurs, mimicking, name calling, graffiti, innuendo, gestures, physical contact, stalking, threatening, bullying, extorting or the display or circulation of written materials or pictures. These apply to all of the characteristics listed above.
For more specific examples see page 3 of this policy.

Sexual Harassment means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

(A) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education.

(B) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

(C) The conduct has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive educational environment.

Vermont Statutes, Title 16, Section 11(a)(26).

This applies whether the harassment is between people of the same or different gender. Sexual harassment can include unwelcome verbal, written or physical conduct, directed at or related to a person's gender, such as sexual gossip or personal comments of a sexual nature, sexually suggestive or foul language, sexual jokes, whistling, spreading rumors or lies of a sexual nature about someone, demanding sexual favors, forcing sexual activity by threat of punishment or offer of educational reward, obscene graffiti, display or sending of pornographic pictures or objects, offensive touching, pinching, grabbing, kissing or hugging or restraining someone's movement in a sexual way.

Additional examples of specific types of prohibited harassment are listed below.

Racial and Color Harassment

Racial or color harassment can include unwelcome verbal, written or physical conduct, directed at the characteristics of a person's race or color, such as nicknames emphasizing stereotypes, racial slurs, comments on manner of speaking, and negative references to racial customs.

Religious (Creed) Harassment

Harassment on the basis of religion or creed is unwelcome verbal, written or physical conduct, directed at the characteristics of a person's religion or creed, such as derogatory comments regarding surnames, religious tradition, or religious clothing, or religious slurs, or graffiti.

National Origin Harassment

Harassment on the basis of national origin is unwelcome verbal, written or physical conduct, directed at the characteristics of a person's national origin, such as negative comments regarding surnames, manner of speaking, customs, language, or ethnic slurs.

Marital Status Harassment

Harassment on the basis of marital status is unwelcome verbal, written or physical conduct, directed at the characteristics of a person's marital status, such as comments regarding pregnancy or being an unwed mother or father.

Sexual Orientation Harassment

Harassment on the basis of sexual orientation is unwelcome verbal, written or physical conduct, directed at the characteristics of a person's sexual orientation, such as negative name calling and imitating mannerisms.

Disability Harassment

Disability harassment includes harassment based on a person's disabling mental or physical condition and includes any unwelcome verbal, written or physical conduct, directed at the characteristics of a person's disabling condition, such as imitating manner of speech or movement, or interference with necessary equipment.

Retaliation

It is a separate and distinct violation of this policy for any member of the school community to retaliate against any person who reports alleged harassment or against any person who testifies, assists or participates in an investigation, proceeding or hearing relating to such harassment. It is possible that a alleged harasser may be found to have violated this anti-retaliation provision even if the underlying complaint of harassment is not found to be a violation of this policy. Retaliation includes, but is not limited to any form of intimidation, reprisal or harassment and may be redressed through application of the same reporting, investigation, and enforcement procedures as for harassment. [*In addition, a person who knowingly makes a false report may be subject to the same action that the Supervisory Union and/or School District may take against any other individual who violates this policy. The term "false report" refers only to those made in bad faith and does not include a complaint that could not be corroborated or which did not rise to the level of unlawful harassment.*]

Consequences

Any school employee or student that is found to have violated this policy may be subject to action including, but not limited to, warning, remedial training, education or counseling, suspension, exclusion, expulsion, transfer, termination or discharge.

** RECOMMENDED PROCEDURES FOR IMPLEMENTATION OF MODEL ANTI-HARASSMENT POLICY

Reporting

Any school employee who observes, overhears or otherwise witnesses harassment, which may be unlawful, or to whom such harassment is reported, **must** take prompt and appropriate action to stop the harassment and to prevent its reoccurrence. A written report of the incident and the action taken by the school employee in response to it must also be given to the appropriate Supervisory Union/School District/harassment complaint official designated to oversee the handling of harassment complaints.

In the event that the school employee is unable to personally take prompt and appropriate action, the employee must report the incident or complaint in writing to the appropriate Supervisory Union/School District/harassment complaint official(s) designated by this policy.

Any student or other person who believes that unlawful harassment of a student has occurred may inform any school employee or one of the harassment complaint officials.

Any student who believes that s/he has been the target of unlawful harassment as defined in this policy may bring their complaint to the attention of any school employee or the harassment complaint official. Any student who believes that any corrective action taken by a school employee was ineffective, may bring their complaint to the attention of the harassment complaint official. The complaint may be made either orally or in writing. The following are the harassment complaint officials:

_____(name) _____(title)

_____(name) _____(title)

If one of the harassment complaint officials is the person alleged to be engaged in the harassment, the complaint shall be filed with one of the alternative officials or any other school employee the student chooses.

** [*Italics and brackets indicate language that is not required but is recommended as best practice*]

[Process

Informal Procedure

It may be possible to resolve a complaint through a voluntary conversation between the complaining student and the alleged harasser which is facilitated by a school employee or by a designated harassment complaint official. If the complaining student or alleged harasser is a student under the age of 18, the harassment complaint official should notify the student's parent(s)/guardian(s) if, after initial consultation with the student, if it is determined to be in the best interests of the student. Both the complaining student and the alleged harasser may be accompanied by a person of their choice for support and guidance. If the complaining student and the alleged harasser feel that a resolution has been achieved, then the conversation may remain confidential and no further action needs to be taken. The results of an informal resolution shall be reported by the facilitator, in writing, to the Superintendent and to the School Principal.

If the complaining student, the alleged harasser, or the school employee/harassment complaint official, chooses not to utilize the informal procedure, or feels that the informal procedure is inadequate or has been unsuccessful, s/he may proceed to the formal procedure. Any complaint against a school employee shall be handled through the formal procedure.

Formal Procedure

Step 1

The harassment complaint official shall fill out a harassment complaint form based on the written or verbal allegations of the complaining student. This complaint form shall be kept in a centralized and secure location.

A) The complaint form shall detail the facts and circumstances of the incident or pattern of behavior.

B) If a student under 18 years of age is involved, his/her parents shall be notified immediately unless, after consultation with the student, it is determined not to be in the best interests of the student.

C) An investigation shall be completed by the harassment complaint official within 14 calendar days from the date of the complaint or report.

Step 2

The investigation may consist of personal interviews with the complaining student, the alleged harasser and any other individuals who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. In determining whether alleged conduct constitutes a violation of this policy, the harassment complaint official should consider the surrounding circumstances, any relevant documents, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

In addition, the _____ Supervisory Union and/or School District may take immediate steps, at its discretion, to protect the complaining student, alleged harasser, witnesses, and school employees pending completion of an investigation of alleged harassment and may make any appropriate referrals for assistance including but not limited to counseling, rape crisis intervention, etc.

The investigation will be completed as soon as practicable, but no later than fourteen (14) calendar days from the complaint or report. The harassment complaint official shall make a written report to the Superintendent and the School Principal upon completion of the investigation. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

Step 3

Following the investigation, the harassment complaint official shall recommend to the Superintendent and/or School Principal what action, if any, is required. The Supervisory Union and/or School District shall take appropriate action in all cases where the harassment complaint official concludes that this policy has been violated. Any person who is determined to have violated this policy shall be subject to action including but not limited to, warning, exclusion, suspension, expulsion, transfer, termination, discharge or any other remedial action including but not limited to training, education, or counseling. Action taken for violation of this policy shall be consistent with the requirements of any applicable collective bargaining agreement, Supervisory Union and/or School District policy, state and federal law, including but not limited to the due process protections for students with disabilities.

Step 4

The Superintendent and/or School Principal shall maintain the written report of the investigation and results in his/her office. In the case of an investigation conducted by a school district, the Superintendent shall receive a copy of the investigation report and results. If the harassment complaint official concludes that the policy has been violated by a professional educator or administrator, a report of the findings shall be filed with the Licensing Office of the Vermont Department of Education.

The complaining student and the alleged harasser shall be informed of the results of the investigation, including whether the allegations were found to be factual, whether there was a violation of the policy, and whether disciplinary action was or will be taken.]

[* * * *Reporting of potential physical and/or sexual abuse*

Several behaviors listed as sexual harassment (i.e. sexual touching, grabbing, pinching, being forced to kiss someone, being forced to do something other than kissing, sexual assault) may also constitute physical or sexual abuse. Sexual abuse is defined as any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy or any lewd or lascivious conduct involving a child. Thus under certain circumstances, alleged harassment may also be possible physical and/or sexual abuse under Vermont law. Such harassment or abuse is subject to the duties of mandatory reporting and must be reported to the Department of Social and Rehabilitation Services (SRS) within 24 hours of the time the educator becomes aware of the suspected abuse. Vermont Statutes, Title 33, Section 4911 et seq.] * * **(while not absolutely required by the statute, recent events and an Attorney General's Opinion lead us to recommend that something like this paragraph be included in the procedures)**

[*Confidentiality*

The _____ Supervisory Union and/or School District recognizes that both the complaining student and the alleged harasser have strong interests in maintaining the confidentiality of the allegations and related information. The privacy of the complaining student, the individual(s) against whom the complaint is filed, and the witnesses will be respected as much as possible, consistent with legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.]

Alternative Complaint Procedures

In addition to, or instead of, filing a harassment complaint through this policy, a person may choose to exercise other options, including but not limited to filing a complaint with outside agencies or filing a private lawsuit.

Outside Agencies

A charge of harassment may also be investigated by the Vermont Human Rights Commission, [*the Vermont Department of Education,*] or the Office for Civil Rights of the U.S. Department of Education which may be contacted as follows:

Office for Civil Rights
U.S. Department of Education, Region 1
McCormack Post Office and Courthouse
Room 222, Post Office Square
Boston, MA 02109
(617) 223-9667

[*Vermont Department of Education*
120 State Street
Montpelier, VT 05620-2501
(802) 828-3135]

Vermont Human Rights Commission
135 State Street (2nd Floor)
Drawer 33
Montpelier, VT 05633-1201
(802) 828-2480

[*Litigation*

A student who has been harassed may file a lawsuit under a number of federal or state statutes. (Including Titles IV, VI, and IX of the federal Civil Rights Act of 1964; the Rehabilitation Act of 1973, and the Vermont Public Accommodations Act.) He or she, or his/her parent, should consult with a private attorney about these rights and options.]

Notice and Publication

The School Board shall provide notice of the policy and procedures to students, custodial parents or guardians and school employees. Notice to students shall be in age-appropriate language and should include examples of harassment. At a minimum, the policy shall be conspicuously posted throughout each school building in areas accessible to all members of the school community. The notice shall also appear in the school handbook and any other publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school. There shall be procedures for publicizing, on an annual basis, the identity of the harassment complaint officials who are designated to receive complaints. The board shall use its discretion in developing and initiating age-appropriate programs to effectively inform students and school employees about the substance of the policy and procedures in order to help prevent harassment.

APPENDIX B

Welfare

DISCRIMINATION/HARASSMENT: COMPLAINT PROCEDURES FOR STUDENTS

PROCEDURES FOR ASSURANCE OF COMPLIANCE WITH FEDERAL/STATE REGULATIONS/SCHOOL BOARD POLICIES OF NONDISCRIMINATION/HARASSMENT IN EDUCATIONAL ACTIVITIES/PROGRAMS

I. Purpose

The School Board of Dade County, Florida, has established procedures to assure nondiscrimination in educational activities/programs and the elimination of harassment, including sexual harassment. It is the policy of the School Board that all students will be treated with respect. Hostile treatment or violence against a student because of his/her gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, or disability, will not be tolerated.

It is recognized that discrimination or harassment complaints by students may arise from actual or perceived situations and circumstances related to the prohibition of discrimination. It is the intent of this procedure to assure that discrimination or harassment complaints are resolved in an expeditious, orderly, and equitable manner that serves to fulfill the letter and intent of the regulations. All principals are required to make a conscientious effort to fully consider and understand the nature and basis of the discrimination or harassment complaint of a student and resolve it without delay or refer it to the appropriate source for resolution without delay. The initiation of a discrimination or harassment complaint by a student will not be used as a basis for actions that adversely affect the student's standing in his/her school.

Discrimination or harassment complaints made under the provisions of this rule will be handled in an informal manner and without extraneous administrative barriers, except that a record or log will be maintained of each discrimination or harassment complaint to include the final disposition of each.

II. Definitions

A. **Complaint.** A written allegation, officially made to a principal by a student that there has been a discriminatory action or inaction on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, or disability, against the student by a specified individual or individuals, situations,

circumstances, conditions, or other factors within the school system's scope of responsibility.

B. **Student.** The person (student/parent/guardian) filing a complaint.

C. **Respondent.** The individual(s) charged with or having responsibility for the alleged discriminatory action.

D. **Principal.** The principal having immediate administrative authority over the school.

E. **Assistant/Associate/Region Superintendent.** The Assistant/ Associate/Region Superintendent having immediate administrative authority over the principal.

F. **Executive Director, Division of Equal Educational Opportunity and Advocacy.** The Executive Director, Division of Equal Educational Opportunity and Advocacy, who is responsible for monitoring the district's compliance with federal/state regulations related to civil rights, discrimination, and harassment. The Executive Director, Division of Equal Educational Opportunity and Advocacy is authorized to make the final determination on complaints involving students.

G. **Letter of Inquiry.** Assistant/Associate/Region Superintendents or other appropriate district or region staff may initiate a letter of inquiry to the Executive Director, Division of Equal Educational Opportunity and Advocacy for the purpose of seeking clarification of a Dade County Public Schools rule related to the compliance or interpretation and application of federal/state regulations regarding civil rights, discrimination or harassment.

A response to letters of inquiry should be made within ten (10) school days following receipt.

III. Procedure for Complaints

A. **Step #1.** The student shall communicate in writing to the principal that there has been a discriminatory or harassing action or inaction. The principal will be responsible for scheduling a discussion on the complaint with the student within five (5) school days following receipt of the communication.

In the event the complaint involves the student's principal or other school administrator, he/she may appeal directly to the Assistant/Associate/Region Superintendent, bypassing Step #1

above and move directly to Step #2 as indicated below.

B. **Step #2**. If, after discussion of the complaint with the principal, the complaint, in the opinion of the student is not resolved, or cannot be resolved at that level, the complaint shall be forwarded by the principal within five (5) school days, to the Assistant/Associate/ Region Superintendent for resolution.

C. **Step #3**.

1. If the complaint is not satisfactorily resolved in Step #2, as determined by the student, he/she may file a complaint with the Executive Director, Division of Equal Educational Opportunity and Advocacy.

2. **Conciliation** - If a determination of reasonable cause is made, the Executive Director, Division of Equal Educational Opportunity and Advocacy, will seek to conciliate the complaint with the respondent and the student.

   Resolution of the complaint through this procedure by agreement of all participants, i.e., the student, the respondent, and the Executive Director, Division of Equal Educational Opportunity and Advocacy, will close the issue.

3. **Corrective Action** - If a determination of reasonable cause is made and the issue cannot be resolved by conciliation, or the circumstances preclude conciliation by the principal, the Executive Director, Division of Equal Educational Opportunity and Advocacy will present the issue to the Assistant/Associate/Region Superintendent, for corrective action. The Assistant/ Associate/Region Superintendent shall submit a response to the Executive Director, Division of Equal Educational Opportunity and Advocacy, of actual or proposed corrective action within ten (10) school days from date of receipt.

   If the response of corrective action proposed constitutes an inadequate or inappropriate response to the complaint, the Executive Director, Division of Equal Educational Opportunity and Advocacy will make the final determination of corrective action.

V. Appeals

If the student does not agree with the statement of final determination made

by the Executive Director, Division of Equal Educational Opportunity and Advocacy, he/she may appeal the determination to the Superintendent's designee to hear such appeals.

In addition, the student has the right to seek recourse through the Federal Office for Civil Rights (OCR).

VI. **Special Provisions**

A. Failure on the part of the student to initiate and/or follow-up on a complaint in a timely manner may result in the complaint being considered abandoned.

B. Failure by a principal to respond to a complaint within the prescribed time limits will automatically move the complaint to the next step.

C. In general, students shall continue attendance at school and pursue their studies, as directed, while complaints are pending resolution.

D. Copies of all communications pertaining to a complaint shall be provided to the student, unless classified as privileged or confidential according to statute.

E. If the student does not feel comfortable discussing his/her complaint at the school or region level, the student may file the complaint directly with the Executive Director, Division of Equal Educational Opportunity and Advocacy.

This policy is intended to effect compliance with federal/state regulations, i.e.: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Florida Education Equity Act (F.S. 228.2001); and State Board Rules 6A-19.001, 6A-19.002, 6A-19.008, 6B-1.006; and the Multicultural Education Training Advocacy, Inc. (META) Consent Decree.

Specific Authority: 230.22(2) F.S.
Law Implemented, Interpreted, or Made Specific: 228.2001 F.S.; 6A-19.001; 6A-19.002; 6A-19.008; 6A-19.010; 6B-1.006 FAC; Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Multicultural Education Training Advocacy, Inc. (META) Consent Decree.

History
New: 6-4-86
Amended: 11-19-86; 9-22-93

THE SCHOOL BOARD OF DADE COUNTY, FLORIDA

APPENDIX C

NON-DISCRIMINATION POLICY

The School District of Ashland is committed to equal educational opportunity for all students in the District.

It is the policy of the School District of Ashland, pursuant to Sec. 118.13, Wis. Stat., and PI 9, that no person, on the basis of sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional, or learning disability, may be denied admission to any school in this District or be denied participation in, be denied the benefits of, or be discriminated against in any curricular, extra curricular, pupil services, recreational, or other program.

This policy also prohibits discrimination under related federal statutes, including Title VI of the Civil Rights Act of 1964 (race and national origin), Title IX of the Education Amendments of 1972 (sex), and Sec. 504 of the Rehabilitation Act of 1973 (handicap).

It shall be the responsibility of the District Administrator to examine existing policies and develop new policies where needed to ensure that the School District of Ashland does not discriminate pursuant to federal and state law. The District Administrator shall ensure that an employee is designated annually to receive complaints filed under Sec. 504 of the Rehabilitation Act of 1973. That employee shall assure adoption of a complaint procedure to resolve complaints alleging violation of these laws, assure that an evaluation of the District's compliance with Sec. 118.13, Wis. Stat., is completed every five years under PI 9, Wis. Admin. Code and submit Form PI-1197 to the Department of Public Instruction annually.

CR 6010

Board Approved: July 27, 1987

136

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

NOV 20 1996

JAMIE S. NABOZNY,

Plaintiff,

v.

MARY PODLESNY, WILLIAM DAVIS, THOMAS BLAUERT and the ASHLAND PUBLIC SCHOOL DISTRICT,

Defendants.

SPECIAL VERDICT

95-C-086-S

1. Did any of the following defendants intentionally discriminate against plaintiff on the basis of his gender or sexual orientation? (Answer yes or no as to each).

Mary Podlesny	Yes
William Davis	Yes
Thomas Blauert	Yes
Ashland Public School District	No

Signed this 19th day of November, 1996.

Lynn Webster
Foreperson

A TRUE COPY, Certified
NOV 21 1996
Joseph W. Skupniewitz, Clerk
U. S. District Court
Western District of Wisconsin
By Lucinn Kampen
Deputy Clerk

APPENDIX D

NEA-Alaska

State of Alaska Code of Ethics of the Education Profession

Chapter 10.
Professional Teaching Practices Commission

Section
10. Coverage
20. Code of ethics and teaching standards
310. Distribution of handbook

20 AAC 10.010. COVERAGE. All members of the teaching profession (as defined in AS 14.20.370) are obligated to abide by the code of ethics and the professional teaching standards adopted by the Professional Teaching Practices Commission. (Effective 1/30/75, Reg. 53)

Authority: AS 14.20.480

The Commission's office is located at:
344 West Third Avenue, Suite 127
Anchorage, Alaska 99501
phone: 269-6579 Fax: 269-6580

20 AAC 10.020. CODE OF ETHICS AND TEACHING STANDARDS.

(a) The following code of ethics and professional teaching standards of the Professional Teaching Practices Commission governs all members of the teaching profession. A violation of this section constitutes grounds for revocation or suspension of certification as provided in AS 14.20.030, or a warning or a reprimand as provided in AS 14.20.470(3).

(b) In fulfilling obligations to students, an educator:

(1) may not restrain a student from independent action in the student's pursuit of learning or deny the student access to varying points of view without reasonable cause;
(2) may not deliberately suppress or distort subject matter relevant to a student's progress;
(3) shall make reasonable effort to protect students from conditions harmful to learning or to health and safety;
(4) may not engage in physical abuse of a student or sexual conduct with a student and shall report to the commission knowledge of such an act by an educator;
(5) may not expose a student to unnecessary embarrassment or disparagement;
(6) may not harass, discriminate against, or grant a discriminatory advantage to a student on the grounds of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation; shall make reasonable effort to assure that a student is protected from harassment or discrimination on these grounds; and may not engage in a course of conduct that would encourage a reasonable student to develop a prejudice on these grounds;
(7) may not use professional relationships with students for private advantage or gain;
(8) shall keep in confidence information that has been obtained in the course of providing professional service, unless disclosure serves a compelling professional purpose or is required by law;

CONNECTICUT

(http://www.state.ct.us/sde/cert/inetregs/toc.htm)

10-145d-400a. Code of professional responsibility for teachers

(1) The professional teacher, in full recognition of his or her obligation to the student, shall:

(A) Recognize, respect and uphold the dignity and worth of students as individual human beings, and therefore deal justly and considerately with students;

(B) Engage students in the pursuit of truth, knowledge and wisdom and provide access to all points of view without deliberate distortion of subject matter;

[(C) Nurture in students lifelong respect and compassion for themselves and other human beings regardless of race, ethnic origin, gender, social class, disability, religion, or sexual orientation]

(D) Foster in students the full understanding, application and preservation of democratic principles and processes;

(E) Guide students to acquire the requisite skills and understanding for participatory citizenship and to realize their obligation to be worthy and contributing members of society;

(F) Assist students in the formulation of value systems and worthy, positive goals;

(G) Promote the right and freedom of students to learn, explore ideas, develop learning skills and acquire the necessary knowledge to achieve their full potential;

(H) Strive to develop within students fundamental critical thinking skills and problem-solving techniques;

(I) Remain steadfast in guaranteeing equal opportunity for quality education for all children, and not unlawfully discriminate; and

Florida Department of Education

The Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida

Florida Education Standards Commission

Professionalism Through Integrity

THE PRINCIPLES OF PROFESSIONAL CONDUCT OF THE EDUCATION PROFESSION IN FLORIDA

State Board of Education Rule 6B-1.006, FAC.

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct of the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical the health and/or safety.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

(c) Shall not unreasonably deny a student access to diverse points of view.

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

(f) Shall not intentionally violate or deny a student's legal rights.

[(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.]

(h) Shall not exploit a relationship with a student for personal gain or advantage.

(i) Shall keep in confidence personally identifiable information obtained in the course of professional services, unless disclosure serves professional purposes or is required by law.

(4) Obligation to the public requires the individual:

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

(c) Shall not use institutional privileges for personal gain or advantage.

§ 235.6. Legal obligations.

(a) The professional educator may not engage in conduct prohibited by the act of December 12, 1973 (P. L. 397, No. 141) (24 P. S. §§ 12-1251—12-1268), known as the Teacher Certification Law.

(b) The professional educator may not engage in conduct prohibited by:

(1) The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702) and other laws relating to the schools or the education of children.

(2) The applicable laws of the Commonwealth establishing ethics of public officials and public employes, including the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. §§ 401—413), known as the Public Official and Employee Ethics Law.

(c) Violation of subsection (b) shall have been found to exist by an agency of proper jurisdiction to be considered an independent basis for discipline.

Cross References

This section cited in 22 Pa. Code § 235.5 (relating to conduct).

§ 235.7. Certification.

The professional educator may not:

(1) Accept employment, when not properly certificated, in a position for which certification is required.

(2) Assist entry into or continuance in the education profession of an unqualified person.

(3) Employ, or recommend for employment, a person who is not certificated appropriately for the position.

Cross References

This section cited in 22 Pa. Code § 235.5 (relating to conduct).

§ 235.8. Civil rights.

The professional educator may not:

(1) Discriminate on the basis of race, National or ethnic origin, culture, religion, sex or sexual orientation, marital status, age, political beliefs, socioeconomic status; disabling condition or vocational interest against a student or fellow professional. This list of bases of discrimination is not all-inclusive. This discrimination shall be found to exist by an agency of proper jurisdiction to be considered an independent basis for discipline.

(2) Interfere with a student's or colleague's exercise of political and civil rights and responsibilities.

Cross References

This section cited in 22 Pa. Code § 235.5 (relating to conduct).

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APPENDIX E

State of Rhode Island and Providence Plantations
Department of Education
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400
Telephone: 401-277-4600
Fax: 401-277-6178
TTY: 800-745-5555
Voice: 800-745-6575

May 30, 1997

TO: Superintendents

FROM: Peter McWalters, Commissioner

RE: Board of Regents Policy Statement on Discrimination Based on Sexual Orientation

The Rhode Island Board of Regents for Elementary and Secondary Education recognizes that full access of all people and groups to educational opportunities and full participation in educational experiences should be the policy and practice of educational agencies. All individuals and groups must be afforded the opportunity to participate fully and thereby reach their maximum potential. Barriers to student participation which are based on sexual orientation must be identified and removed.

Certain students, because of their actual or perceived sexual orientation, have been subject to discrimination through abuse, harassment, or exclusion from full participation in educational activities. These conditions undermine the goals of Civil Rights activities in education; i.e., to remove barriers, promote nondiscrimination and support the provision of equal educational opportunities. The Board also recognizes that all students, without exception, have the right to come to school and feel safe.

Therefore, it is the Policy of the Board of Regents that no student shall be excluded from, discriminated against, or harassed in any educational program, activity or facility in a public school on account of sexual orientation or perception of same. The policy shall apply to admissions, guidance, recreational and extra-curricular activities as well as all public educational programs and activities.

Each local school district is urged to review programs, services and activities to assure that such offerings are conducted in a manner that is free of inadvertent or intentional bias. Each local school district is also urged to prohibit harassment based on sexual orientation through the development and enforcement of appropriate student and staff behavior and disciplinary policies.

Staff of the Rhode Island Department of Education will be available to assist school districts in the development and implementation of appropriate policies consistent with the Regents' Policy Prohibiting Discrimination Based on Sexual Orientation.

APPENDIX F

APPENDIX F

THE EARLY 1980'S: THE FIRST STATE EXPRESSLY PROHIBITS SEXUAL ORIENTATION DISCRIMINATION IN PUBLIC SCHOOLS IN ITS EDUCATION CODE:

WISCONSIN §118.13 Pupil discrimination prohibited. (1) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

OTHER STATES FOLLOW IN THEIR EDUCATION CODES, FOR EXAMPLE:

MASSACHUSETTS 76 § 5. Place of attendance; discrimination Every person shall have a right to attend the public schools of the town where he actually resides, subject to the following section. No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, religion, national origin or sexual orientation.

VERMONT 16 § 11(A)(26) "Harassment" means unlawful harassment which constitutes a form of discrimination. It means verbal or physical conduct based on a student's race, creed, color, national origin, marital status, sex, sexual orientation or disability and which has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive environment . . . .

PENNSYLVANIA 22 § 5.4 (C) It is the policy of the Board that educational programs shall be provided without discrimination on the basis of race, sex, color, religion, disability, sexual orientation or national origin.

THE MOST RECENT STATE TO AMEND ITS EDUCATION CODE ACCORDINGLY, EFFECTIVE JULY 1, 1997:

CONNECTICUT -- ***See following page for the new language of the education statute.***

David Buckel/Lambda

on each component of said mastery examination may annually take or retake each such component at its regular administration until such student scores at or above each such state-wide mastery goal level or such student graduates or reaches age twenty-one.

(e) No such public school or [any] endowed or incorporated high school or academy may require achievement of a satisfactory score on the state-wide mastery examination, or any subsequent retest on a component of such examination as the sole criterion of promotion or graduation.

Sec. 6. Section 10-15c of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The public schools shall be open to all children five years of age and over who reach age five on or before the first day of January of any school year, and each such child shall have, and shall be so advised by the appropriate school authorities, an equal opportunity to participate in the activities, programs and courses of study offered in such public schools, at such time as the child becomes eligible to participate in such activities, programs and courses of study, without discrimination on account of race, color, sex, religion, [or] national origin OR SEXUAL ORIENTATION; provided boards of education may, by vote at a meeting duly called, admit to any school children under five years of age.

(b) NOTHING IN SUBSECTION (a) OF THIS SECTION SHALL BE DEEMED TO AMEND OTHER PROVISIONS OF THE GENERAL STATUTES WITH RESPECT TO CURRICULA, FACILITIES OR EXTRACURRICULAR ACTIVITIES.

Sec. 7. Subsections (a) and (b) of section 10-16n of the general statutes are repealed and the following is substituted in lieu thereof:

(a) The Commissioner of Education, in consultation with the Commissioner of Social Services, shall establish a competitive grant program to assist nonprofit agencies and local and regional boards of education, which are federal Head Start grantees, in (1) establishing extended-day and full-day, year-round, Head Start programs or expanding existing Head Start programs to extended-day or full-day, year-round programs, (2) enhancing program quality and (3) increasing the number of children served. The commissioner, after consultation with the committee established pursuant to subsection [(b)] (c) of this section, shall establish criteria for the grants, provided at least twenty-five per cent of the funding for such grants shall be for the purpose of enhancing program quality. Nonprofit agencies or boards of education seeking grants pursuant to this section shall make application to the Commissioner of Education on such forms and at such times as the commissioner shall prescribe. All grants pursuant to this section shall be funded within the limits of available appropriations or otherwise from federal funds and private donations. At least seventy-five per cent of the funding pursuant to this section shall be allocated to Head Start programs established prior to July 1, 1992. All full-day, year-round Head Start programs funded pursuant to this section shall be in compliance